

Union Calendar No. 317

103D CONGRESS
2D SESSION

S. 208

[Report No. 103-571]

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To reform the concessions policies of the National
Park Service, and for other purposes.

JUNE 30, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1994

Referred to the Committee on Natural Resources

JUNE 30, 1994

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of Senate passed bill, see copy of bill as printed in the House of Representatives on
March 23, 1994]

AN ACT

To reform the concessions policies of the National Park
Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “National Park Service*
5 *Concessions Policy Reform Act of 1994”.*

1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) *FINDINGS.*—In furtherance of the Act of August 25,
3 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–4), which
4 directs the Secretary of the Interior to administer areas of
5 the National Park System in accordance with the fun-
6 damental purpose of conserving their scenery, wildlife, nat-
7 ural and historic objects, and providing for their enjoyment
8 in a manner that will leave them unimpaired for the enjoy-
9 ment of future generations, the Congress finds that the pres-
10 ervation and conservation of park resources and values re-
11 quires that such public accommodations, facilities, and
12 services within such areas as the Secretary, in accordance
13 with this Act, determines necessary and appropriate—

14 (1) *should be provided only under carefully con-*
15 *trolled safeguards against unregulated and indis-*
16 *criminate use so that visitation will not unduly im-*
17 *pair park resources and values; and*

18 (2) *should be limited to locations and designs*
19 *consistent to the highest practicable degree with the*
20 *preservation and conservation of park resources and*
21 *values.*

22 (b) *POLICY.*—It is the policy of the Congress that—

23 (1) *development on Federal lands within a park*
24 *shall be limited to those facilities that the Secretary*
25 *determines are necessary and appropriate for public*

1 *use and enjoyment of the park in which such facilities*
2 *and services are located;*

3 (2) *development within a park should be consist-*
4 *ent to the highest practicable degree with the preserva-*
5 *tion and conservation of the park's resources and*
6 *values;*

7 (3) *park facilities and services the Secretary de-*
8 *termines suitable to be provided by parties other than*
9 *the Secretary should be provided by private persons,*
10 *corporations, or other entities, except when no private*
11 *interest is qualified and willing to provide such fa-*
12 *cilities and services;*

13 (4) *if the Secretary determines that development*
14 *should occur within a park, such development shall be*
15 *designed, located, and operated in a manner that is*
16 *consistent with the purposes for which such park was*
17 *established;*

18 (5) *the right to provide such services and to de-*
19 *velop or utilize facilities should be awarded to the*
20 *person, corporation, or entity submitting the best pro-*
21 *posal through a competitive selection process;*

22 (6) *such facilities or services should be provided*
23 *to the public at reasonable rates; and*

24 (7) *if adequate facilities to serve the needs of*
25 *park visitors exist outside a park's boundaries or can*

1 *feasibly be developed outside such boundaries by pri-*
2 *vate enterprise, such facilities should not be developed*
3 *or expanded within the park.*

4 **SEC. 3. DEFINITIONS.**

5 *As used in this Act—*

6 *(1) the term “concessioner” means a person, cor-*
7 *poration, or other entity to whom a concession con-*
8 *tract has been awarded;*

9 *(2) the term “concession contract” means a con-*
10 *tract, or permit, (but not an authorization issued*
11 *pursuant to section 5(b) of this Act) to provide facili-*
12 *ties or services, or both, at a park;*

13 *(3) the term “facilities” means improvements to*
14 *real property within parks used to provide accom-*
15 *modations, facilities, or services to park visitors;*

16 *(4) the term “park” means a unit of the Na-*
17 *tional Park System;*

18 *(5) the term “proposal” means the complete pro-*
19 *posal for a concession contract offered by a potential*
20 *or existing concessioner in response to the minimum*
21 *requirements for the contract established by the Sec-*
22 *retary;*

23 *(6) the term “Secretary” means the Secretary of*
24 *the Interior; and*

1 (7) the term “franchise fee” means the fee re-
2 quired by a concession contract to be paid to the
3 United States in consideration for the privileges af-
4 forded by such contract to the holder thereof, which
5 may be expressed as a percentage of revenues derived
6 by the contract holder from activities authorized by
7 the contract, and which shall be in addition to fees
8 required to be paid to the United States for the use
9 of federally-owned buildings or other facilities.

10 **SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

11 The Act of October 9, 1965, Public Law 89-249 (79
12 Stat. 969, 16 U.S.C. 20-20g), entitled “An Act relating to
13 the establishment of concession policies in the areas admin-
14 istered by National Park Service and for other purposes”,
15 is hereby repealed. The repeal of such Act shall not affect
16 the validity of any contract entered into under such Act,
17 but the provisions of this Act shall apply to any such con-
18 tract except to the extent such provisions are inconsistent
19 with the express terms and conditions of the contract. Noth-
20 ing in this Act that is inconsistent with a prospectus issued
21 before April 1, 1994, shall apply to the contract with respect
22 to which such prospectus was issued. The Secretary is au-
23 thorized to award a concession contract prior to promulga-
24 tion of new regulations to implement this Act if the Sec-
25 retary determines that protection of public health and safe-

1 *ty warrant such action, provided that such contract is con-*
 2 *sistent with this Act.*

3 **SEC. 5. CONCESSION CONTRACTS AND OTHER AUTHORIZA-**
 4 **TIONS.**

5 (a) *CONCESSIONS.*—(1) *Subject to the findings and*
 6 *policy stated in section 2 of this Act and the provisions*
 7 *of this section, the Secretary may award concession con-*
 8 *tracts that authorize private persons, corporations, or other*
 9 *entities to provide services to park visitors and to utilize*
 10 *facilities if the Secretary determines that such award is the*
 11 *appropriate means for such authorization.*

12 (2) *Concession contracts shall be awarded only to the*
 13 *extent that the Secretary finds that the services to be pro-*
 14 *vided and the facilities to be utilized pursuant to each such*
 15 *contract are necessary and appropriate for the accommoda-*
 16 *tion of visitors to a park.*

17 (3) *The provision of services and the utilization of fa-*
 18 *cilities pursuant to concession contracts shall be consistent*
 19 *with all applicable requirements of law, including laws re-*
 20 *lating generally to the administration and management of*
 21 *units of the National Park Service, and with the general*
 22 *management plan, concessions plan, and other relevant*
 23 *plans developed by the Secretary for the relevant park.*

24 (b) *OTHER AUTHORIZATIONS.*—(1) *To the extent spec-*
 25 *ified in this subsection, the Secretary, upon request, may*

1 *authorize a private person, corporation, or other entity to*
2 *provide services to park visitors otherwise than by award*
3 *of a concession contract.*

4 (2)(A) *The authority of this subsection may be used*
5 *only to authorize provision of services to park visitors that*
6 *the Secretary determines have minimal impact on park re-*
7 *sources and values and will be consistent with the purposes*
8 *for which the relevant park was established and with all*
9 *applicable management plans for such park.*

10 (B) *The Secretary—*

11 (i) *shall require payment of a reasonable fee for*
12 *issuance of an authorization under this subsection;*

13 (ii) *shall require that the provision of services*
14 *under such an authorization be accomplished in a*
15 *manner consistent to the highest practicable degree*
16 *with the preservation and conservation of park re-*
17 *sources and values;*

18 (iii) *shall take appropriate steps to limit the li-*
19 *ability of the United States arising from the provi-*
20 *sion of services under such an authorization; and*

21 (iv) *shall have no authority under this subsection*
22 *to issue more authorizations than are consistent with*
23 *the preservation and proper management of park re-*
24 *sources and values, and shall establish such other con-*
25 *ditions for issuance of such an authorization as the*

1 *Secretary determines appropriate for protection of*
 2 *visitors, provision of adequate and appropriate visi-*
 3 *tor services, and protection and proper management*
 4 *of the resources and values of the National Park*
 5 *System.*

6 *(3) An entity seeking or obtaining an authorization*
 7 *pursuant to this subsection shall not be precluded from also*
 8 *submitting proposals for concession contracts.*

9 **SEC. 6. COMPETITIVE SELECTION PROCESS.**

10 *(a) IN GENERAL.—(1) Except as provided in sub-*
 11 *section (b), and consistent with the provisions of subsection*
 12 *(g), any concession contract entered into pursuant to this*
 13 *Act shall be awarded to the person submitting the best pro-*
 14 *posal, as determined by the Secretary through the competi-*
 15 *tive selection process specified in this section.*

16 *(2) Within 180 days after the date of enactment of this*
 17 *Act, the Secretary shall promulgate appropriate regulations*
 18 *establishing a process to implement this section. The regula-*
 19 *tions shall include provisions for establishing a method or*
 20 *procedure for the resolution of disputes between the Sec-*
 21 *retary and a concessioner in those instances where the Sec-*
 22 *retary has been unable to meet conditions or requirements*
 23 *or provide such services, if any, as set forth in a prospectus*
 24 *pursuant to sections 6(c)(2) (D) and (E).*

1 (b) *TEMPORARY CONTRACT.*—Notwithstanding the
2 provisions of subsection (a), the Secretary may award on
3 a noncompetitive basis a temporary concession contract if
4 the Secretary determines such an award to be necessary in
5 order to avoid interruption of services to the public at a
6 park. Prior to making such a determination, the Secretary
7 shall take all reasonable and appropriate steps to consider
8 alternative actions to avoid such interruptions.

9 (c) *PROSPECTUS.*—(1) Prior to soliciting proposals for
10 a concession contract at a park, the Secretary shall prepare
11 a prospectus soliciting proposals, shall publish a notice of
12 its availability at least once in such local or national news-
13 papers or trade publications as the Secretary determines
14 appropriate, and shall make such prospectus available upon
15 request to all interested parties.

16 (2) The prospectus shall include, but need not be lim-
17 ited to, the following information:

18 (A) The minimum requirements for such con-
19 tract, as set forth in subsection (d).

20 (B) The terms and conditions of the existing con-
21 cession contract awarded for such park, if any, in-
22 cluding all fees and other forms of compensation pro-
23 vided to the United States by the concessioner, and all
24 information available to the Secretary with regard to
25 the wages, hours, and conditions of employment of the

1 *workforce engaged by the concessioner to fulfill the re-*
2 *quirements of such existing concession contract.*

3 *(C) Other authorized facilities or services which*
4 *may be included in a proposal.*

5 *(D) Facilities and services to be provided by the*
6 *Secretary to the concessioner, if any, including but*
7 *not limited to, public access, utilities, and buildings.*

8 *(E) The services to park visitors intended to be*
9 *offered within a park by the Secretary, including but*
10 *not limited to, interpretive programs, campsites, and*
11 *visitor centers.*

12 *(F) Such other information related to the pro-*
13 *posed concessions operation which is not privileged or*
14 *otherwise exempt from disclosure under Federal law*
15 *as the Secretary determines is necessary to allow for*
16 *the submission of competitive proposals.*

17 *(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No*
18 *proposal shall be considered which fails to meet the mini-*
19 *imum requirements included in the relevant prospectus.*
20 *Such minimum requirements shall include payment to the*
21 *United States of a franchise fee and shall also include, but*
22 *need not be limited to, the following:*

23 *(A) The minimum acceptable franchise fee, fees*
24 *for use of any Federal buildings or other facilities,*
25 *and any other fees to be paid to the United States.*

1 (B) *The duration of the contract.*

2 (C) *Any facilities, services, or capital invest-*
3 *ments required to be provided by the concessioner.*

4 (D) *Measures that will be required in order to*
5 *ensure the protection and preservation of park re-*
6 *sources and values.*

7 (2) *The Secretary may reject any proposal, notwith-*
8 *standing the amount of franchise fee offered, if the Secretary*
9 *determines that the person, corporation, or entity making*
10 *such proposal is not qualified, is likely to provide unsatis-*
11 *factory service, or that the proposal is not sufficiently re-*
12 *sponsive to the objectives of protecting and preserving park*
13 *resources and of providing necessary and appropriate fa-*
14 *cilities or services to the public at reasonable rates.*

15 (3) *If all proposals submitted to the Secretary either*
16 *fail to meet the minimum requirements or are rejected by*
17 *the Secretary, the Secretary shall establish new minimum*
18 *contract requirements and re-initiate the competitive selec-*
19 *tion process pursuant to this section.*

20 (e) *SELECTION OF BEST PROPOSAL.—(1) In selecting*
21 *the best proposal, the Secretary shall consider the following*
22 *principal factors:*

23 (A) *The responsiveness of the proposal to the ob-*
24 *jectives of protecting and preserving park resources*

1 *and of providing necessary and appropriate facilities*
2 *and services to the public at reasonable rates.*

3 *(B) The experience, expertise, and related back-*
4 *ground of the person, corporation, or other entity sub-*
5 *mitting the proposal, including whether the submitter*
6 *is the holder of a previous concession contract for*
7 *similar services at the same park and has established*
8 *a record of outstanding performance in executing that*
9 *contract, the submitter's history of satisfactory per-*
10 *formance under any other concession contract, and*
11 *the submitter's compliance with applicable labor law*
12 *and existing standards regarding wages, hours, and*
13 *conditions of employment and provision of a safe and*
14 *healthful workplace in connection with any concession*
15 *contract.*

16 *(C) The financial capability of the person, cor-*
17 *poration, or entity submitting the proposal.*

18 *(D) The proposed franchise fee: Provided, That*
19 *consideration of revenue to the United States shall be*
20 *subordinate to the objectives of protecting and preserv-*
21 *ing park resources including cultural resources, and*
22 *of providing necessary and appropriate facilities or*
23 *services to the public at reasonable rates.*

24 *(2) The Secretary may also consider such secondary*
25 *factors as the Secretary deems appropriate. In developing*

1 *regulations to implement this Act, the Secretary shall con-*
2 *sider the extent to which plans for employment of Indians*
3 *(including Native Alaskans) and involvement of businesses*
4 *owned by Indians, Indian tribes, or Native Alaskans in the*
5 *operation of concession contracts should be identified as a*
6 *factor in the selection of a best offer under this section.*

7 (f) *CONGRESSIONAL NOTIFICATION.*—(1) *The Sec-*
8 *retary shall submit any proposed concession contract with*
9 *anticipated annual gross receipts in excess of \$1,000,000*
10 *(indexed to 1993 constant dollars) or a duration in excess*
11 *of ten years to the Committee on Energy and Natural Re-*
12 *sources of the United States Senate and the Committee on*
13 *Natural Resources of the United States House of Represent-*
14 *atives.*

15 (2) *The Secretary shall not award any such proposed*
16 *contract until at least 60 days subsequent to the submission*
17 *thereof to both Committees.*

18 (g) *NO PREFERENTIAL RIGHT OF RENEWAL.*—(1) *Ex-*
19 *cept as provided in paragraph (2), the Secretary shall not*
20 *grant a preferential right to a concessioner to renew a con-*
21 *cession contract executed pursuant to this Act.*

22 (2)(A)(i) *Notwithstanding the provisions of paragraph*
23 *(1), the Secretary shall include a preferential right of re-*
24 *newal in a concession contract covered by this paragraph,*

1 *but exercise of such right shall be subject to the requirements*
2 *of this paragraph.*

3 *(ii) As used in this paragraph, the term “preferential*
4 *right of renewal” means a provision in a concession con-*
5 *tract allowing a concessioner satisfying the requirements of*
6 *this paragraph to have the opportunity to match the terms*
7 *and conditions of any competing proposal which the Sec-*
8 *retary determines to be the best offer for a new concession*
9 *contract for provision of the same services as were author-*
10 *ized by the concession contract that included the pref-*
11 *erential right of renewal.*

12 *(B) The provisions of this paragraph shall apply only*
13 *to concession contracts which the Secretary estimates will*
14 *result in annual gross receipts of no more than \$500,000*
15 *in any year during the term of the contract.*

16 *(C) A preferential right of renewal may be exercised*
17 *by a concessioner only when such right is included in a*
18 *concession contract and only where the Secretary has deter-*
19 *mined both—*

20 *(i) that the concessioner has operated satisfac-*
21 *torily during the term of such contract, and*

22 *(ii) that the concessioner has submitted a respon-*
23 *sive proposal for a new contract which satisfies the*
24 *minimum requirements established by the Secretary*
25 *pursuant to section 6 of this Act.*

1 (D) A concessioner who exercises a preferential right
 2 of renewal in accordance with the requirements of this
 3 paragraph shall be entitled to award of the new concession
 4 contract with respect to which such right is exercised.

5 (h) NO PREFERENTIAL RIGHT TO ADDITIONAL SERV-
 6 ICES.—The Secretary shall not grant a preferential right
 7 to a concessioner to provide new or additional services at
 8 a park, but may agree to changes in concession contracts
 9 that would allow the holders thereof to provide services inci-
 10 dental to or closely related to the services authorized by such
 11 contracts, if the Secretary determines that such changes
 12 would enhance the safety or enjoyment of park visitors or
 13 the protection of park resources and values and would not
 14 unduly restrict competition for award of concession con-
 15 tracts.

16 **SEC. 7. FRANCHISE FEES.**

17 Franchise fees, however stated, shall not be less than
 18 the minimum franchise fee established by the Secretary for
 19 each contract. The minimum franchise fee shall be deter-
 20 mined in a manner that will provide the concessioner with
 21 a reasonable opportunity to realize a profit on the operation
 22 as a whole, commensurate with the capital invested and the
 23 obligations assumed.

1 **SEC. 8. USE OF FRANCHISE FEES.**

2 (a) *SPECIAL ACCOUNT.*—*Except as provided in sub-*
3 *section (b), all receipts collected pursuant to this Act shall*
4 *be covered into a special account established in the Treasury*
5 *of the United States. Amounts covered into such account*
6 *in a fiscal year shall be available for expenditure, subject*
7 *to appropriation, solely as follows:*

8 (1) *50 percent shall be allocated among the units*
9 *of the National Park System in the same proportion*
10 *as franchise fees collected from a specific unit bears*
11 *to the total amount covered into the account for each*
12 *fiscal year, to be used for resource management and*
13 *protection, maintenance activities, interpretation,*
14 *and research.*

15 (2) *50 percent shall be allocated among the units*
16 *of the National Park System on the basis of need, in*
17 *a manner to be determined by the Secretary, to be*
18 *used for resource management and protection, main-*
19 *tenance activities, interpretation, and research.*

20 (b) *PARK IMPROVEMENT FUNDS.*—(1) *In lieu of col-*
21 *lecting all or a portion of the franchise fees that would oth-*
22 *erwise be collected pursuant to a concession contract, the*
23 *Secretary shall, where the Secretary determines it to be de-*
24 *sirable, establish a Park Improvement Fund (hereinafter in*
25 *this section referred to as the “fund”), in which some or*
26 *all of the concessioners at the relevant park shall deposit*

1 *the franchise fees that would otherwise be required by the*
2 *contract.*

3 (2) *The Secretary shall maintain the fund separately*
4 *from any other funds or accounts and shall not commingle*
5 *the monies in the fund with any other monies. The Sec-*
6 *retary may establish such other terms, conditions, or re-*
7 *quirements as the Secretary determines to be necessary to*
8 *ensure the financial integrity of such fund.*

9 (3)(A) *Monies from the fund shall be expended solely*
10 *for activities and projects within the park which are con-*
11 *sistent with the park's general management plan, conces-*
12 *sions plan, and other applicable plans, and which the Sec-*
13 *retary determines will enhance public use, safety, and en-*
14 *joyment of the park, including but not limited to projects*
15 *which directly or indirectly support concession facilities or*
16 *services required by the concession contract, but no expendi-*
17 *ture from the fund shall have the effect of creating or in-*
18 *creasing any compensable interest of any concessioner in*
19 *any such facilities. A concessioner shall not be allowed to*
20 *make any advances or credits to the fund.*

21 (B) *To the extent consistent with the need to respond*
22 *to urgent requirements and with priorities established as*
23 *part of a park's general management plan or concessions*
24 *management plan, the Secretary shall direct that monies*
25 *from the fund be utilized in coordination with funds pro-*

1 vided by other sources, including donations from the Na-
2 tional Park Foundation or other groups associated with one
3 or more units of the National Park System.

4 (4) A concessioner shall not be granted any interest
5 in improvements made from fund expenditures, including
6 any interest granted pursuant to section 11(b) of this Act.

7 (5) Nothing in this subsection shall affect the obliga-
8 tion of a concessioner to insure, maintain, and repair any
9 structure, fixture, or improvement assigned to such conces-
10 sioner and to insure that such structure, fixture, or im-
11 provement fully complies with applicable safety and health
12 laws and regulations.

13 (6) The Secretary shall maintain proper records for
14 all expenditures made from the fund. Such records shall in-
15 clude, but not be limited to invoices, bank statements, can-
16 celed checks, and such other information as the Secretary
17 may require.

18 (7) A fund established pursuant to this subsection may
19 not be used for any capital expenditure exceeding
20 \$2,500,000 in any fiscal year unless such expenditure from
21 a fund has been authorized in advance by Act of Congress.
22 The Secretary shall annually inform the Congress concern-
23 ing the actual and projected use of moneys in each fund
24 established pursuant to this subsection.

1 **SEC. 9. DURATION OF CONTRACT.**

2 (a) *MAXIMUM TERM.*—A concession contract entered
3 into pursuant to this Act shall be awarded for a term not
4 to exceed ten years: Provided, however, That the Secretary
5 may award a contract for a term not to exceed twenty years
6 if the Secretary determines that a longer term is a necessary
7 component of the overall contract in order to reduce the
8 costs to the United States of acquiring possessory interests
9 or to carry out the policies of this Act and other laws appli-
10 cable to the National Park System.

11 (b) *TEMPORARY CONTRACT.*—A temporary concession
12 contract awarded on a non-competitive basis pursuant to
13 section 6(b) of this Act shall be for a term not to exceed
14 two years.

15 **SEC. 10. TRANSFER OF CONTRACT.**

16 (a) *IN GENERAL.*—(1) No concession contract may be
17 transferred, assigned, sold, or otherwise conveyed by a con-
18 cessioner without prior written notification to, and ap-
19 proval of the Secretary.

20 (2) The Secretary shall not unreasonably withhold ap-
21 proval of a transfer, assignment, sale, or conveyance of a
22 concession contract, but shall not approve the transfer of
23 a concession contract to any individual, corporation or
24 other entity if the Secretary determines that—

1 (A) such individual, corporation or entity is, or
2 is likely to be, unable to completely satisfy all of the
3 requirements, terms, and conditions of the contract;

4 (B) such transfer, assignment, sale or conveyance
5 is not consistent with the objectives of protecting and
6 preserving park resources, and of providing necessary
7 and appropriate facilities or services to the public at
8 reasonable rates; or

9 (C) the terms of the transfer, assignment, sale, or
10 conveyance directly or indirectly attribute a signifi-
11 cant value to intangible assets or otherwise may so re-
12 duce the opportunity for a reasonable profit over the
13 remaining term of the contract that the United States
14 would be required to make substantial additional ex-
15 penditures in order to avoid interruption of services
16 to park visitors.

17 (b) CONGRESSIONAL NOTIFICATION.—Within thirty
18 days after receiving a request to approve a transfer, assign-
19 ment, sale, or other conveyance of a concession contract, the
20 Secretary shall notify the Committee on Energy and Natu-
21 ral Resources of the United States Senate and the Commit-
22 tee on Natural Resources of the United States House of Rep-
23 resentatives of such proposal. Approval of such proposal, if
24 granted by the Secretary, shall not take effect until sixty
25 days after the date of notification of both Committees.

1 **SEC. 11. PROTECTION OF CONCESSIONER INVESTMENT.**

2 (a) *EXISTING STRUCTURES.*—(1) *A concessioner who,*
3 *pursuant to a concession contract, before the date of enact-*
4 *ment of this Act acquired or constructed, or as of such date*
5 *was required by such a contract to commence acquisition*
6 *or construction, of any structure, fixture, or improvement*
7 *upon land owned by the United States within a park, shall*
8 *have a possessory interest therein, to the extent provided*
9 *by such contract.*

10 (2) *The provisions of this subsection shall not apply*
11 *to a concessioner whose contract in effect on the date of en-*
12 *actment of this Act does not include recognition of a*
13 *possessory interest.*

14 (3)(A) *Except as provided in subparagraph (B), with*
15 *respect to a concession contract entered into on or after the*
16 *date of enactment of this Act, the provisions of subsection*
17 *(b) shall apply to any existing structure, fixture, or im-*
18 *provement as defined in paragraph (1), except that the*
19 *value of the possessory interest as of the termination date*
20 *of the first contract expiring after the date of enactment*
21 *of this Act shall be used as the basis for depreciation, in*
22 *lieu of the actual original cost of such structure, fixture,*
23 *or improvement.*

24 (B)(i) *If the Secretary determines during the competi-*
25 *tive selection process that all proposals submitted either fail*
26 *to meet the minimum requirements or are rejected (as pro-*

1 vided in section 6), the Secretary may, solely with respect
 2 to a structure, fixture, or improvement covered under this
 3 paragraph, suspend the depreciation provisions of sub-
 4 section (b)(1) for the duration of the contract: Provided,
 5 That the Secretary may suspend such depreciation provi-
 6 sions only if the Secretary determines that the establishment
 7 of other new minimum contract requirements is not likely
 8 to result in the submission of satisfactory proposals, and
 9 that the suspension of the depreciation provisions is likely
 10 to result in the submission of satisfactory proposals.

11 (ii) If the Secretary suspends the depreciation provi-
 12 sions of subsection (b)(1) pursuant to this subparagraph,
 13 the Secretary may include in the relevant concession con-
 14 tract, as an obligation of the United States, a compensatory
 15 interest in any structure, fixture, or improvement with re-
 16 spect to which such depreciation provisions were suspended
 17 in an amount not to exceed the fair market value of such
 18 structure, fixture, or improvement.

19 (b) NEW STRUCTURES.—(1) On or after the date of
 20 enactment of this Act, a concessioner who constructs or ac-
 21 quires a new, additional, or replacement structure, fixture,
 22 or improvement upon land owned by the United States
 23 within a park, pursuant to a concession contract, shall have
 24 an interest in such structure, fixture, or improvement
 25 equivalent to the actual original cost of acquiring or con-

1 *structing such structure, fixture, or improvement, less*
2 *straight line depreciation over the estimated useful life of*
3 *the asset according to Generally Accepted Accounting Prin-*
4 *ciples: Provided, That in no event shall the estimated useful*
5 *life of such asset exceed the depreciation period used for such*
6 *asset for Federal income tax purposes.*

7 (2) *In the event that the contract expires or is termi-*
8 *nated prior to the estimated useful life of an asset described*
9 *in paragraph (1), the concessioner shall be entitled to re-*
10 *ceive from the United States or the successor concessioner*
11 *payment equal to the value of the concessioner's interest in*
12 *such structure, fixture, or improvement. A successor conces-*
13 *sioner may not revalue the interest in such structure, fix-*
14 *ture, or improvement, the method of depreciation, or the*
15 *estimated useful life of the asset.*

16 (3) *Title to any such structure, fixture, or improve-*
17 *ment shall be vested in the United States.*

18 (c) *INSURANCE, MAINTENANCE AND REPAIR.—Nothing*
19 *in this section shall affect the obligation of a concessioner*
20 *to insure, maintain, and repair any structure, fixture, or*
21 *improvement assigned to such concessioner and to insure*
22 *that such structure, fixture, or improvement fully complies*
23 *with applicable safety and health laws and regulations.*

1 **SEC. 12. RATES AND CHARGES TO PUBLIC.**

2 *The reasonableness of a concessioner's rates and*
3 *charges to the public shall, unless otherwise provided in the*
4 *prospectus and contract, be judged primarily by compari-*
5 *son with those rates and charges for facilities and services*
6 *of comparable character charged by parties in reasonable*
7 *proximity to the relevant park and operating under similar*
8 *conditions, with due consideration for length of season, sea-*
9 *sonal variance, average percentage of occupancy, accessibil-*
10 *ity, availability and costs of labor and materials, type of*
11 *patronage, and other factors deemed significant by the Sec-*
12 *retary.*

13 **SEC. 13. CONCESSIONER PERFORMANCE EVALUATION.**

14 *(a) REGULATIONS.—Within one hundred and eighty*
15 *days after the date of enactment of this Act, the Secretary,*
16 *after an appropriate period for public comment, shall pub-*
17 *lish regulations establishing standards and criteria for eval-*
18 *uating the performance of concessioners operating within*
19 *parks.*

20 *(b) PERIODIC EVALUATION.—(1) The Secretary shall*
21 *periodically conduct an evaluation of each concessioner op-*
22 *erating under a concession contract pursuant to this Act*
23 *to determine whether such concessioner has performed satis-*
24 *factorily. In evaluating a concessioner's performance, the*
25 *Secretary shall seek and consider applicable reports and*
26 *comments from appropriate Federal, State, and local regu-*

latory agencies, and shall seek and consider the views of park visitors and concession customers. If the Secretary's performance evaluation results in an unsatisfactory rating of the concessioner's overall operation, the Secretary shall so notify the concessioner in writing, and shall provide the concessioner with a list of the minimum requirements necessary for the operation to be rated satisfactory.

(2) The Secretary may terminate a concession contract if the concessioner fails to meet the minimum operational requirements identified by the Secretary within the time limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner.

(3) If the Secretary terminates a concession contract pursuant to this section, the Secretary shall solicit proposals for a new contract consistent with the provisions of this Act.

(c) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives of each unsatisfactory rating and of each concession contract terminated pursuant to this section.

SEC. 14. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Sec-

1 *retary to determine that all terms of the concessioner's con-*
 2 *tract have been and are being faithfully performed, and the*
 3 *Secretary, the Inspector General of the Department of the*
 4 *Interior, or any of the Secretary's duly authorized rep-*
 5 *resentatives shall, for the purpose of audit and examination,*
 6 *have access to such records and to other books, documents*
 7 *and papers of the concessioner pertinent to the contract and*
 8 *all the terms and conditions thereof as the Secretary and*
 9 *the Inspector General deem necessary.*

10 (b) *GENERAL ACCOUNTING OFFICE REVIEW.*—The
 11 *Comptroller General of the United States or any of his or*
 12 *her duly authorized representatives shall, until the expira-*
 13 *tion of five calendar years after the close of the business*
 14 *year for each concessioner, have access to and the right to*
 15 *examine any pertinent books, documents, papers, and*
 16 *records of the concessioner related to the contracts or con-*
 17 *tracts involved, including those related to any Park Im-*
 18 *provement Funds established pursuant to section 8(b).*

19 **SEC. 15. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
 20 **MENTS.**

21 *The provisions of section 321 of the Act of June 30,*
 22 *1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing*
 23 *of buildings and properties of the United States, shall not*
 24 *apply to contracts awarded by the Secretary pursuant to*
 25 *this Act.*

1 **SEC. 16. NO EFFECT ON ANILCA PROVISIONS.**

2 *Nothing in this Act shall be construed to amend, super-*
3 *sede, or otherwise affect any provision of the Alaska Na-*
4 *tional Interest Lands Conservation Act (16 U.S.C. 3101 et*
5 *seq.).*

6 **SEC. 17. IMPLEMENTATION.**

7 (a) *AUDIT REQUIREMENT.*—Beginning with fiscal
8 year 1997, the Inspector General of the Department of the
9 Interior shall conduct a biennial audit of the Secretary's
10 implementation of this Act and the award and management
11 of concession contracts and authorizations described in sec-
12 tion 5(b).

13 (b) *BIENNIAL REPORTS.*—Beginning on June 1, 1997,
14 and biannually thereafter the Secretary and the Inspector
15 General of the Department of the Interior shall submit a
16 report to the Committee on Energy and Natural Resources
17 of the United States Senate and the Committee on Natural
18 Resources of the United States House of Representatives on
19 the implementation of this Act and the effect of such imple-
20 mentation on facilities operated and services provided pur-
21 suant to concession contracts.

22 (c) *INFORMATION FROM SECRETARY.*—In each report
23 required by this section, the Secretary shall—

24 (1) *identify any concession contracts which have*
25 *been renewed, renegotiated, terminated, or transferred*
26 *during the 2 years prior to the submission of the re-*

1 *port and identify any significant changes in the*
2 *terms of the new contract;*

3 *(2) state the amount of franchise fees, the rates*
4 *which would be charged for services, and the level of*
5 *other services required to be provided by the conces-*
6 *sioner in comparison to that required in any previous*
7 *concession contract for the same facilities or services*
8 *at the same park;*

9 *(3) assess the degree to which facilities are being*
10 *maintained, using the condition of such facilities on*
11 *the date of enactment of this Act as a baseline;*

12 *(4) indicate whether competition has been in-*
13 *creased or decreased with respect to the awarding of*
14 *concession contracts;*

15 *(5) set forth the total amount of revenues re-*
16 *ceived and financial obligations incurred or reduced*
17 *by the Federal Government as a result of enactment*
18 *of this Act for the reporting period and in compari-*
19 *son with previous reporting periods and the baseline*
20 *year of 1993, including the costs, if any, associated*
21 *with the acquisition of possessory interests; and*

22 *(6) include information concerning any park*
23 *improvement funds established pursuant to section*
24 *8(b) of this Act, including—*

1 (A) the total amount of funds deposited into
2 and expended from each such fund during the
3 preceding 2-year period; and

4 (B) the purposes for which expenditures
5 from such funds during such period were used.

6 (d) *INFORMATION FROM INSPECTOR GENERAL.*—In
7 each report required by this section, the Inspector General
8 of the Department of the Interior shall include information
9 as to the results of the audit required by subsection (a),
10 including—

11 (1) the status of the Secretary's implementation
12 of this Act;

13 (2) the extent to which such implementation has
14 furthered the policies of this Act, as set forth in sec-
15 tion 2, and has led to an increase or decrease in com-
16 petition for concession contracts;

17 (3) the adequacy of recordkeeping and other re-
18 quirements imposed on establishment and use of park
19 improvement funds established pursuant to section
20 8(b); and

21 (4) any recommendations the Inspector General
22 may find appropriate in order to further the purposes
23 of this Act and other laws applicable to the National
24 Park System or to assure that park improvement
25 funds established pursuant to section 8(b) are main-

1 *tained and expenditures therefrom are used in accord-*
 2 *ance with this Act and sound business practices.*

Passed the Senate March 22 (legislative day, February 22), 1994.

Attest: WALTER J. STEWART,
 Secretary.

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S 208 RH—3

S 208 RH—4